No. 17,348

United States
COURT OF APPEALS
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

v.

DENTON J. REES and KATHRYN G. REES,

Appellees.

On Appeal from the Judgment of the United States District Court for the District of Oregon.

BRIEF FOR THE APPELLEES

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CITATIONS

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OPINION BELOW

The opinion of the District Court (R. 24-33) is reported at 187 F. Supp. 924.

JURISDICTION

This is a suit instituted against the United States for the recovery of 1955, 1956, and 1957 income taxes paid. The taxpayers filed their returns on or about April 9, 1956, March 29, 1957, and April 15, 1958, respectively (R. 14-15). In addition to the amounts

paid with their returns, the taxpayers paid asserted deficiencies for each of the calendar years on December 1, 1958 (R. 33). The taxpayers filed claims for refund on March 3, 1959, and these were denied on August 24, 1959 (R. 34). Complaint was filed on October 7, 1959 (R. 3-12, 43) within the time provided in Section 6532 of the Internal Revenue Code of 1954, for recovery of the taxes paid.

Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1346. Judgment was entered on November 28, 1960 (R. 39-40, 44). Within sixty days and on January 24, 1961, the United States filed its notice of appeal (R. 40-41, 45). Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

QUESTIONS PRESENTED

1. May the skill and reputation of a professional practitioner, such as a dentist, be bought and sold as good will?

2. May good will be sold or transferred to others without the assignment and use of the firm name to which the good will is alleged to attach?

3. Must the amount denominated as good will in an agreement of sale which represents the agreed value placed upon an aggregate of personal and professional considerations designate the exact amount in dollars and cents attributed to that which is personal and that which is professional in order to avoid the contention that there is a failure of proof of the exact sum paid for good will?

STATUTE INVOLVED

Internal Revenue Code of 1954:

SEC. 61. GROSS INCOME DEFINED.

(a) *General Definition.*—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items:

(2) Gross income derived from business;

* * * * *

(13) Distributive share of partnership gross income;

* * * * *

(26 U.S.C. 1958 ed., Sec. 61.)

SEC. 1221. CAPITAL ASSET DEFINED.

For the purposes of this subtitle, the term "capital asset" means property held by the taxpayer * * *

* * * * *

(26 U.S.C. 1958 ed., Sec. 1221.)

STATEMENT

Denton J. Rees graduated from dental school in 1935 and immediately commenced the practice of dentistry in the state of Oregon. With the exception of the period he was with the Armed Services of the United States from 1941 to 1946, Rees has continuously practiced his profession in Oregon. In 1953, Rees' health was poor and his practice had reached the stage where it was difficult for him to carry on without working extra hours and further damaging his health. This, together with the fact that he was finding it prac-

tically impossible to take vacations and refresher courses in orthodontia, in which he was specializing, caused him to consider the advantages of a partnership arrangement with a Dr. Woods and a Dr. Butori, two other orthodontists. Dr. Woods graduated from dental school in 1945 and after his service in the Navy entered into the general practice of dentistry in Portland and continued in practice until the summer of 1947 when he commenced taking a special course in orthodontia at the University of Illinois. He received his Masters degree from that institution and in January 1949, commenced the practice of orthodontia in Portland. For a considerable period of time, he was a part time instructor of orthodontia at the University of Oregon Dental School. He continued this practice until he was called into the Armed Services during the Korean War in March 1953. Dr. Butori graduated from dental school in February 1946, and after serving in the Armed Forces he practiced in Portland from 1948 until October 1951. At that time he took special training in orthodontia at the University of Washington. He received a Masters degree from such institution in 1953 and became associated with Dr. Woods in the practice of orthodontia immediately thereafter. This association continued until the formation of the partnership with Rees. Woods and Butori were practicing under a profit-sharing agreement. They were successful in their practice and were not willing to enter into a partnership arrangement other than on an equal basis. Woods and Butori were well-acquainted with Rees and with the extent of his practice and the

fact that he was one of two doctors in Portland who was a member of the American Board of Orthodontics, a very prestigeous group.

During the discussions leading up to the formation of the partnership and the drafting of the agreement, the doctors very thoroughly discussed the fact that it was no more than fair that Rees should be paid a substantial sum for good will. After giving full consideration to Rees' fine reputation, both in their profession and with members of the public, which resulted in a very large number of cases being referred to his office by other dentists and by patients who had received satisfactory treatment, and by taxpayer's own personal contacts, and the benefits which would accrue to them from operating on a clinic basis, they concluded that a fair price for them to pay Rees for good will in entering into this arrangement with him would be $35,000. At that time both Dr. Woods and Dr. Butori had established a professional reputation of their own, but they felt they would greatly expedite their advance in their profession and would substantially increase their income if they formed a partnership with Rees. Insofar as known, this is the first attempt to practice orthodontia on a clinic basis. The evidence clearly shows that the partnership as formed has been extremely successful.

The contract of sale under which Rees sold good will to Butori and Woods contain the following paragraphs:

> "1. Sale of Interest In Business: The Seller shall sell to the Purchasers an interest in and to the practice of the Seller operated in the Selling Build-

ing, Portland, Oregon, including the good will of the practice, the lease to the premises, and a like percentage of all furniture, fixtures, supplies, and equipment now devoted to said practice, with such changes that occur, up to the date of closing, in the normal course of business operation, and the Seller shall enter into an agreement of co-partnership with Purchasers whereby the parties hereto shall share the profits and losses equally.

"2. Exclusions. This sale does not include any cash on hand or in banks at the date of closing. Nor does this sale include any accounts receivable due to the respective parties at the date of closing, nor amounts received after date of closing for dental work done prior to the date of closing. For the purpose of this agreement dental work done before the date of closing shall include only so much of the treatment of each patient as shall have been completed before the date of closing.

* * * * *

"6. Purchase Price. The purchase price of all the assets referred to in paragraph 1 is $40,000.00 of which $35,000.00 is attributable to the good will of Seller's established practice (See exhibit "A" attached for detailed breakdown of assets other than good will). The sum of $100.00 in cash, or by certified check, shall be paid to the Seller at the time of closing. The balance of $39,000.00 shall be paid by the purchasers to the Seller in equal monthly installments over a period of 10 years, or sooner at the option of the Purchasers, until the unpaid balance of $39,900.00, without interest shall have been paid in full. . . ."

STATEMENT OF POINTS TO BE URGED

The District Court did not err in that after considering the three points presented for determination (R. 28, 29, 30) the Court, on the basis of the evidence submitted, held that the sum of $35,000 received by Dr. Rees was in payment for good will as intended by the parties in their agreements.

SUMMARY OF ARGUMENT

While the appellant seeks to limit its argument largely to question III (R. 30) presented to the Court for decision, the appellees contend the case at bar must be considered on the entire record as submitted to the District Court. For that reason appellees will reiterate a portion of the decision of the Honorable Judge Kilkenny whose opinion, in a large part, was directed to answering the same argument of the defendant in the District Court as is now urged by appellant before this Court.

ARGUMENT

The District Court did not err in that it decided the instant case on the basis of three points presented for the Court's determination: (1) May the skill of a professional practitioner, such as a dentist, be bought and sold as good will; (2) must the sale and assignment of good will include the assignment and use of the firm name; (3) must an aggregate of personal and professional considerations discussed in arriving at the

value of good will be segregated to avoid the contention of a failure of proof of the exact sum which was paid for good will?

Judge Kilkenny's Opinion relative to the above three points is as follows (R. 28-33):

> "Three questions are presented for determination by the Court:
>
> "I. May the skill and reputation of a professional practitioner, such as a dentist, be bought and sold as good will? The contract of sale and the other evidence in the record make it very clear that the parties intended Rees would sell and Woods and Butori would purchase good will. Under Oregon law the courts will try to give effect to the provisions of the contract exactly as the parties intended them. McKenney v. Buffelen Mfg. Co., 9 Cir., 1956, 232 F. 2d 5. A construction of a contract which would make a portion thereof invalid is not favored. J. C. Millett Co. v. Distillers Distributing Corp., 9 Cir., 1956, 258 F. 2d 139.
>
> "Although some courts hold to the contrary, Carol F. Hall (1952), 19 T.C. 445, 460, the better-reasoned cases permit a professional man to sell good will and allow capital gains treatment of the sales price. Rodney B. Horton (1949) 13 T.C. 143; Richard S. Wyler, (1950), 14 T.C. 1251; and Estate of Masquelette v. Commissioner, 5 Cir., 1956, 239 F. 2d 322. An actual sale of good will may be treated as such even though it is not specifically mentioned in the contract. Estate of Masquelette v. Commissioner, supra. O'Rear v. Commissioner, 6 Cir., 1935, 80 F. 2d 473, 474, cited by defendant, was decided many years prior to the decisions in the above cases and the statements in the case concerning the sale of good will by a professional man are pure dicta. Defendant urges that Oregon has not decided this question. The Supreme Court of Oregon has held that good will is property. Kaler v.

Spady, 148 Or. 206, 24 P. 2d 351; Levene v. City of Salem, 191 Or. 182, 229 P. 2d 255. Oregon has recognized the sale of good will by physicians, surgeons, lawyers and dentists. Thompson Optical Institute v. Thompson, 119 Or. 252, 262-263, 237 P. 965. Good will is recognized as property which may be owned and disposed of by a partnership. ORS[1] 68.210(3)(b).

"II. Defendant urges that good will can be sold and transferred to others only by assignment and use of the firm name to which the good will is alleged to attach.

"Masquelette v. Commissioner, supra, is squarely against defendant on this point. In that case the taxpayer had been a successful public accountant for a great many years. He sold his practice, which the court held included good will, even though the contract provided that the purchasers could not use the name Masquelette in connection with their accounting practice. On September 22, 1960, the Commissioner concluded to follow such decision to the extent it stands for the proposition that the existence of a transferrable good will may be recognized in connection with the sale of a business or profession, the success of which is not dependent solely on the personal qualifications of the owner, even though such sale does not involve the assignment of the right to the exclusive use of the firm name. Rev. Rul. 60-301, I.R.B., 1960-38, 7. Masquelette and the new ruling of the Commissioner are conclusive against the defendant. I hold that professional good will may be bought and sold.

"III. The last point raised by the defendant is that the amount denominated as good will in the agreement of sale represented the agreed value placed upon an aggregate of personal and professional consideration and since the personal was not segregated from the professional, there is a failure

[1] Oregon Revised Statutes.

of proof on the exact sum which was paid for good will. There is evidence that the parties took into consideration the following in arriving at the total to be paid for the good will:

> " '(1) The professional skill and reputation of Dr. Rees;
>
> " '(2) The fact Dr. Rees was grossing approximately $80,000 per year from his individual practice while Dr. Woods and Dr. Butori together were only grossing $40,000 per year;
>
> " '(3) The absence of Dr. Woods during the twelve-month period succeeding formation of the new partnership;
>
> " '(4) The number of prospective patients which Dr. Rees had interviewed for possible treatment in the future;
>
> " '(5) The suitability of the location of Dr. Rees' office for the practice of orthodontics on a clinic basis.'

"Defendant argues that all of these facts were considered and evaluated as component parts of the final sum of $35,000 designated as the purchase price of the good will. Defendant then contends that the entire amount paid could not conceivably be classed as gain received from the sale of a capital asset, such as good will, and that the claim must be dismissed for failure of proof under the authority of Roybark v. United States, 104 F. Supp. 579, 761-762 (S. D. Cal.), aff'd 9 Cir., 1954, 218 F. 2d 164, 166, and Corn Products Co. v. Commissioner, 350 U.S. 46, 52. Neither of these cases involved the sale of good will. However, they do announce the legal principle that the taxpayer must show that he has overpaid his tax and must also show the exact amount to which he is entitled.

"As I read the record in this case, the sum of $35,000 was agreed upon by the parties as the value of the good will after taking into consideration all of the factors above mentioned. The Fifth Circuit

in Masquelette approved the definition of good will by Justice Story as follows:

> " 'Good will may be properly enough described to be the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds, or property employed therein, in consequence of the general patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill, or influence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.'

"This definition fits the intangible good will which was the subject of the sale for $35,000. Many factors must be considered, both by the purchasers and by the seller, in arriving at a valuation to be placed on good will. In speaking of the sale of good will, and its tax consequences, Judge Yankwich, in Grace Bros. v. Commissioner, 9 Cir., 1949, 173 F. 2d 170, 176, said:

> " 'In the last analysis, each case depends upon particular facts. And in arriving at a particular conclusion, the trier of the facts must take into consideration all the circumstances proved in the case and draw from them such legitimate inferences as the occasion warrants.'

"There is no claim in this case that any part of the $35,000 should be allocated to the sale of the tangible assets, such as the office equipment. The defendant concedes that a fair value was fixed on those assets. Defendant's sole contention is that the parties should not have taken into consideration the professional skill, reputation and earning ability of Dr. Rees, or the earning ability of Dr. Woods or Dr. Butori, the fact that Dr. Woods was going to be absent for a period of 12 months, the reaction of future patients of Dr. Rees and the suitability

> of Rees' office for the practice of orthodontics on a clinic basis. Any practical businessman would have discussed those features and most, if not all, would effect the judgment of a practical businessman as to what he would pay for the good will of the business or profession. A business contract must be construed in the light of sound business practice. E. I. de Pont de Nemours v. Claiborne-Reno Co., 8 Cir., 1933, 64 F. 2d 224; Erie Rwy. Co. v. Ohio Public Service Co., 6 Cir., 1932, 62 F. 2d 83.
>
> "The intangible which was bought and sold under the contract of sale and under the testimony was good will within the above definition of that term. The fact that Rees did not sell all of the good will is of no significance. Masquelette v. Commissioner, supra, p. 326. * * *"

Notwithstanding the thorough consideration of the problem by the Court, appellant seeks to establish error by contending there is a failure of proof on the part of the appellees since certain items which were discussed are not, in its words, "permissible elements" in arriving at good will. In support of their contention that labeling an item good will does not necessarily render it such, an argument in which the appellees agree, the appellant cites *O'Rear* v. *Commissioner*, 80 F.2d 473 (C.A. 6th). As pointed out by Judge Kilkenny (R. 28-29), all statements in that decision relative to the sale of good will by a professional man are pure dicta. The case was, in fact, decided by the agreement which by its terms recognized that an older attorney by reason of his conceded excess of value of good will and unearned fees was entitled to a payment of $25,000 from each of two younger partners. The Court speaking through Justice Simons stated at page 474:

> "* * * We confine ourselves, however, to the contracts here involved. They are not contracts for the sale of good will. By their terms they recognize that the taxpayer is entitled by reason of his reputation and experience, or due to the conceded excess of good will and unearned fees, to a greater share of the future income of the firm than his less experienced and younger partners. As a 'differential' in the division of fees as yet unearned, they agree to pay him a substantial present consideration * * *"

In the case at bar Dr. Rees recognized that his partners were well qualified (R. 72, 76, 108); he did not consider that he was allocating any of his income to them (R. 76, 77, 78). The partnership now under consideration was brought about because a doctor whose health had been permanently impaired during the Bataan Death March (R. 70) could no longer continue on as he had been doing (R. 70), could not hire orthodontists (R. 71), and as a solution sought a partnership with two other orthodontists who though unwilling to enter into an unequal partnership (R. 72) were willing to enter into a partnership to attempt the practice of orthodontia on a clinic basis (R. 73). It is true that Dr. Rees had an enviable reputation (R. 74, 75, 113) and a potential to acquire patients necessary to make a clinic approach to orthodontia possible (R. 75) even though he had not signed patients for treatment (R. 70, 71): If this had not been so no good will would have existed, *Grace Bros.* v. *Commissioner,* 173 F.2d 170 (C.A. 9th).

In *Commissioner* v. *Chatsworth Stations, Inc.,* 282 F.2d 132 (C.A. 2nd), cited by appellant, the Court, unlike the case at bar, was confronted with several agree-

ments purporting to provide for the sale of good will in which no allocation had been made of the purchase price among the various assets sold. The case was remanded to the tax court for further findings. At page 135 the Court stated:

> "* * * The taxpayer's burden in challenging the Commissioner's allocation is more difficult to sustain where, as here, the parties have made no express allocation of the purchase price * * *"

In the case at bar, there was a complete allocation of the purchase price and appellant, as noted by the District Court (R. 32), did not challenge the correctness of that allocation. The appellant disregards the direct statements of Dr. Rees as to the $35,000 now in question. Dr. Rees testified as follows (R. 77):

> "Mr. Pedersen: Q. All right. Was the figure of $35,000, Doctor, to compensate you for your experience over and above the experience of the incoming doctors?
>
> A. I wouldn't say it was experience. They were competent and well trained. It was to compensate me for the additional patients which I would be able to bring to the group through my sources of reference.
>
> Q. Again, not the ones you had signed up but the ones that were potential patients?
>
> A. The ones I would be able to bring in.
>
> Q. Would you say that the $35,000, Doctor, was to compensate you for a larger share of the profits?
>
> A. No.
>
> Q. Doctor, summing this up at this point, at the time that you entered into this agreement you felt that you had a potential not signed up that you could get into this clinic approach; is that correct?
>
> A. Yes."

Likewise, appellant seeks to tie in the difference of the $80,000 gross income by Dr. Rees prior to the formation of the partnership with the lesser gross by the younger doctors as a major measure of good will. The testimony, however, does not bear this out. Dr. Rees testified as follows on cross-examination by the appellant (R. 96):

"Q. In summing this, Dr. Rees, you did actually make an arithmetical computation; that is true, isn't it?

A. This was arrived at by a discussion and, you might say, dickering.

Q. Your gross income at that time was approximately $80,000 a year, Doctor?

A. Yes.

Q. And you discussed that?

A. For the one year. That is, for 1954.

Q. Yes, sir. Approximately $80,000?

A. Yes.

Q. And that amount was discussed with Dr. Woods and Dr. Butori?

A. Yes. [58]

Q. And their gross amount at that time was approximately $40,000?

A. Yes.

Q. And you discussed that with the two doctors?

A. Yes.

Q. The difference is approximately $40,000?

A. Yes.

Q. And it was that difference between these two amounts of gross income that you arrived at in determining the amount of what is called good will here in this instrument?

A. It acted as one factor in the discussions, yes.

Q. It was the big factor, as you so told us, isn't that true?

A. Well, not necessarily. The amount of money—"

The witness was interrupted by further questions and Dr. Rees further testified relative to the $80,000 gross on redirect as follows (R. 102):

"Q. Doctor, out of that gross how much did you net?

A. I don't have those figures in front of me here, but I would say probably it was about $45,000.

Q. After this partnership was commenced was your gross larger or smaller than $45,000?

A. The first year I believe it was a little bit smaller, but succeedingly it has been as large or larger.

Q. Now, considering, Doctor, the time that you had free to go to clinics, the time that you have taken off for vacations and the time that you have been away from your office, have you expended more or less hours for the income that you have earned in subsequent years?

A. Definitely less hours have been expended in the practice, and then I have had these other advantages with no less income; [65] in fact, a slight increase.

Q. In other words, the partnership has been able to function efficiently, wouldn't you say?

A. Yes."

The fact that Dr. Woods would be absent from the partnership part of the time (R. 97) while stationed in the armed services at Bremerton, Washington, did not, as appellant contends, figure in the value of good will. Dr. Rees testified on recross-examination by counsel for appellant (R. 105):

"Q. All right. Now, I believe you stated that the first year after the clinic was formed your net income or your gross income was lower?

A. I believe my gross was slightly lower the first year after the partnership.

Q. After that it picked up again? [68]

A. Yes.

Q. And it was after that that Dr. Woods came back to practice, was it not?

A. Yes.

Q. And you didn't have the full benefit of his services during that first year?

A. Correct.

Q. And you knew that at the time this instrument was executed?

A. That is correct.

Q. That was one of the considerations in arriving at the amount for the differential of good will?

A. No, I don't believe it was a main consideration.

Q. It was a consideration, Doctor. You did agree to share your profits—

A. In the fees. Not the fact that there would be one year that he was in the service of the Government and was therefore unable to be there. I mean over the long picture we all expected we had many years of practice left, and this one year—also, we had to take into consideration the good will arising to some extent from him and the work that he was doing. So I mean the lack of his being there —of course, that cut down the gross of the partnership for one year, but I don't think that the fact he was in the service this one year was a major consideration in the amount of money that was received for good will, no."

Appellant disregards the importance of a centrally located office which Dr. Rees had. Dr. Rees testified as follows (R. 78):

"Q. How about your office location at that time? Where were you located?

A. At the same location, the Selling Building.

Q. Would that type of location be necessary?

A. It would with a practice of this type. A one-man practice [36] would probably work well in a

suburban location, where you are drawing from the immediate area. But when you try to get into a larger group, where you are working with a greater flow of patients, then you must be pretty centrally located, because our patients come from all directions. We have patients coming from Alaska and from—

Q. Where did Dr. Butori and Woods have their offices at that time?

A. They were located on the East Side, in the Hollywood District.

Q. Do you feel that you could have maintained this group over there in that area?

A. I don't believe it would have been feasible or worked, because such a large number of patients that came from the West Side of Portland, came from Oswego—that area would be very inconvenient for them.

Q. Now, in 1954 what was the situation so far as rental space was concerned?

A. It was very difficult to obtain."

Appellant belabors the point that a new practice was started by the doctors. After the formation of the partnership, the doctors immediately acquainted themselves with patients of the others (R. 79). The clinic approach to orthodontia was different only in the sense that three doctors consulted as to what treatment would be the most effective (Ex. 40A, 40B), and once a course of treatment was decided upon the techniques used were fairly well established. Dr. Rees testified as follows (R. 80):

"Q. Doctor, would you consider orthodontia a practice so specialized that these patients were coming to you because of a special technique that you had learned to do, or something?

A. No. As I say, there are no secret techniques or mysteries. That is why we all give courses, give

papers, to acquaint the other men with what we know. There are differences in techniques, but probably as of today most of the major graduate schools, and about 65 or 70 per cent of the orthodontists in the United States, are using almost the identical technique that we do. * * *"

The main ingredient that was needed to make the clinic approach to orthodontia possible was the ability to acquire patients in sufficient volume. Dr. Rees testified as follows (R. 75):

"Q. Doctor, what had been the result of this—what you had to offer, you felt, was your reputation within this community. You didn't have patients that were actually signed up in the sense of ready to go to work on, but you had a number of patients, as I get it, that had come to see you and had signed these white slips and were waiting treatment. Is that it?

A. Well, it was obvious from the increase in my practice over the preceding four or five years, and with the expectation that if the public is aware of what you are doing that this trend would continue, I would probably be able to draw enough patients into the office to make this thing function. As a matter of fact, I had more demand for my services at that time than I could—in other words, I would have had to turn people [33] away. I couldn't take them."

That Dr. Rees had such a potential is evident from the success of the partnership (R. 102).

To hold as the appellant now contends would require that the Court disregard the express intentions of the parties as shown in their written agreements (Ex. 1, 2, 3, 4, 5) as well as their testimony at the trial and to place thereon a construction contrary to sound business practice.

In *Erie Rwy. Co.* v. *Ohio Public Service Co.*, 6 Cir., 1932, 62 F.2d 83, cited by the District Court (R. 32), the Sixth Circuit Court of Appeals in speaking of the construction that should be placed upon a contract stated at page 83:

> "[2] * * * 'Business contracts must be construed with business sense, as they naturally would be understood by intelligent men of affairs.' The Kronprinzessin Cecilie, 244 U.S. 12, 24, 37 S. Ct. 490, 492, 61 L. Ed. 960."

In *E. I. Du Pont de Nemours & Co.* v. *Claiborne-Reno Co.*, 8 Cir., 1933, 64 F.2d 224, cited by the District Court (R. 34) the Circuit Court at page 228 stated as follows:

> "[8] Contracts are ordinarily to be performed by business men, and should be given the interpretation which would be placed upon them by the business world. * * *"

As pointed out by the District Court (R. 32) in its reference to the statement of Judge Yankwich in *Grace Bros.* v. *Commissioner*, 9 Cir., 1949, 173 F.2d 170 at 176, each case must rest upon its particular facts. It would be ridiculous to argue that the three doctors should not have discussed those items noted by the Court (R. 30) in arriving at good will—as practical businessmen they were obliged to do so.

CONCLUSION

The appellees submit that the District Court having considered this case fully did not err in holding that Dr. Rees sold and Dr. Woods and Dr. Butori purchased good will in the sum of $35,000. The judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX

Table of Exhibits Pursuant to Rule 18(2)(B) as Amended:

Exhibit	*Identified*	*Offered*	*Received*
1 through 12	R. 21	R. 55	R. 55
13 through 26	R. 22	R. 55	R. 55
27 through 40B	R. 23	R. 55	R. 55
41-A	R. 23, 65-66	R. 66	R. 66
41-B	R.23, 66	R. 66	R. 66